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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

11 SIGNAL IP, INC., a California corporation,

Plaintiff,

VS.

**MERCEDES-BENZ USA, LLC, a
Delaware limited liability company;
DAIMLER NORTH AMERICA
CORPORATION, a Delaware
corporation,**

Defendant.

Case No. 2:14-cv-03109-JAK (JEMx)

**JOINT REPORT ON SEQUENCE
OF CASES FOR TRIAL**

Hon. John A. Kronstadt

First Trial Date: March 15, 2016

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1 Plaintiff Signal IP, Inc., ("Plaintiff" or "Signal") and defendants American
 2 Honda Motor Co., Inc. and Honda of America Mfg., Inc. (collectively "Honda"),
 3 Nissan North America, Inc. ("Nissan"), Mazda Motor of America, Inc. ("Mazda"),
 4 Subaru of America, Inc. ("Subaru"), Kia Motors America, Inc. ("KMA"), BMW of
 5 North America, LLC ("BMWNA"), and Mercedes-Benz USA, LLC ("MBUSA"),
 6 (collectively, "Defendants") hereby submit their Joint Report on Sequence of Cases
 7 For Trial. This report is submitted pursuant to the Court's June 12, 2015 scheduling
 8 orders in these actions, which set four trial dates in the related Signal matters but did
 9 not identify the sequence in which the trials would take place.

10 **Plaintiff's Statement**

11 In light of all the circumstances, Plaintiff proposes the following trial
 12 schedule:

13	Trial 1:	March 15, 2016	MBUSA
14	Trial 2:	May 10, 2016	BMWNA
15	Trial 3:	July 12, 2016	Honda
16	Trial 4:	September 13, 2016	Mazda
17	Unscheduled Trials: Nissan, KMA & Subaru		

18 Plaintiff's proposed order rests, in large part, on the considerations addressed
 19 in its oppositions to Defendants' motions to stay. Mercedes has not moved for a
 20 stay. With the new settlement of Signal's action against Volkswagen Group of
 21 America, Inc. and Bentley Motors, Inc., the pending IPR relating to U.S. Patent No.
 22 5,954,775 will be dismissed. With that dismissal, only one of five claims asserted
 23 against BMWNA—claim 21 of U.S. Patent No. 6,012,007—will remain pending
 24 before the USPTO in IPR proceedings. Honda is in a similar position (one of four).
 25 By contrast, Mazda, Nissan, and Subaru each have three or more claims pending
 26 before the USPTO. Those claims would not justify a stay of those actions. In the
 27 absence of compelling reasons to try those actions first, however, Plaintiff proposes
 28 that the Court defer the trial of those actions until after the MBUSA, BMWNA, and

1 Honda actions have been resolved. If necessary, the Court can decide the order of
 2 the unscheduled cases at a later time.

3 Signal disagrees with Defendants' proposal to modify the schedule to delay
 4 filing of dispositive motions and trial. Expert reports have been completed, and
 5 Signal's experts have been deposed. All but one of the expert depositions scheduled
 6 for January 2016 are of *Defendants' own experts*. Defendants do not need Signal to
 7 depose their own experts before they file summary judgment or *Daubert* motions.

8 As Defendants note, there is one additional deposition of Signal's validity
 9 expert, Dr. Trevor Smedley, which will occur in January 2016. However, Signal
 10 already made Dr. Smedley available for two days on December 16 and 17, and only
 11 Mazda and Subaru participated in that deposition, and for only one day on
 12 December 16. The remaining defendants elected not to participate, but they can
 13 review the transcript of the Mazda and Subaru deposition. Moreover, each
 14 defendant has already deposed Dr. Smedley on his background and opinions
 15 regarding infringement. Signal agreed to offer Dr. Smedley for an additional
 16 deposition in January as a courtesy to the defendants who either could not or would
 17 not participate in the depositions that were proposed for December 16 and 17, but
 18 this is not a reason to delay all dispositive motions and trial.

19 **MBUSA's Statement**

20 MBUSA respectfully requests that the Court modify the current scheduling
 21 order to (i) postpone the trial scheduled for March 15, 2016; (ii) extend the deadline
 22 for the completion of expert discovery; and (iii) allow the parties to brief dispositive
 23 motions prior to determining the order in which the trials for the individual
 24 Defendants should proceed. MBUSA believes that this approach will be the most
 25 practical, equitable, and efficient for the reasons set forth below.

26 First, all parties appear to agree that additional time is necessary to complete
 27 expert discovery. The current schedule calls for expert discovery to close on
 28 January 4, 2016. However, because of the volume of experts, the intervening

1 holidays, and Signal's recent request to depose Defendants' technical experts, it has
2 been impossible to schedule all expert depositions to occur prior to January 4th. The
3 parties have worked cooperatively to schedule depositions for the experts on the first
4 available dates, but it currently appears that expert discovery cannot be completed
5 before January 28, 2016.

6 Second, given that expert discovery will not be complete until nearly the end
7 of January, the current deadline for summary judgment and *Daubert* motions
8 (January 8, 2016) should also be extended. On this point, the parties disagree.
9 Signal IP has taken the position that dispositive motions should be filed before the
10 experts are deposed. Signal IP's position, however, is impractical. Expert
11 depositions are likely to provide key evidence supporting dispositive or *Daubert*
12 motions. Conversely, expert depositions could cause the parties to re-think the
13 grounds on which to pursue such motions. As such, the parties should have the
14 opportunity to finish expert discovery prior to the deadline for dispositive and
15 *Daubert* motions.

16 Third, MBUSA respectfully submits that it would be premature to schedule
17 any party for trial on March 15th based on the current status of the case, as noted in
18 the first two items above. No party will be in a position to effectively and
19 efficiently prepare the Pretrial Order, participate in the Pretrial Conference, or try
20 these cases by mid-March. Moreover, the Court will not have an adequate
21 opportunity to consider the parties' summary judgment and *Daubert* motions.
22 MBUSA thus requests that the first trial be postponed until the date of the second
23 trial in mid-May.

24 Finally, MBUSA respectfully requests that the Court postpone determining
25 the sequence of trials until the Court has the opportunity to consider the parties'
26 dispositive motions. Proceeding in this manner will ensure that the first trial is not
27 allocated to a party that prevails on summary judgment, thereby reducing the
28 parties' litigation costs and avoiding the inconvenience to the Court of rescheduling

1 all of the trials after summary judgment decisions are entered.

2 As Signal has repeatedly noted (including above), MBUSA did not join the
 3 other Defendants in seeking a stay of this proceeding. MBUSA did not seek a stay
 4 because Signal IP's allegations of infringement against MBUSA are *exceptionally*
 5 meritless and MBUSA is confident that it will prevail on summary judgment.¹
 6 MBUSA thus did not wish to delay the ultimate resolution of this case by seeking a
 7 stay that would, at best, partially resolve the case while forcing MBUSA to incur
 8 even greater expenses. MBUSA's desire to proceed expeditiously to summary
 9 judgment, however, is not an admission that it is "ready and willing" to try this case
 10 in March 2016, as Signal has suggested elsewhere (*see* Dkt. 111 in 14-cv-0491). To
 11 the contrary, MBUSA is hopeful that it can avoid incurring the litigation costs
 12 associated with a trial once the Court has the opportunity to consider MBUSA's
 13 straight-forward summary judgment motion, which MBUSA intends to submit
 14 immediately following the close of expert discovery.

15 For the reasons set forth above, MBUSA requests that the Court postpone
 16 scheduling individual trials in the Signal IP matter and instead alter the case
 17 schedule as follows:

Deadline	Original Date	New Date
Expert Discovery	January 4, 2016	January 28, 2016

21 ¹ For example, the asserted claim of U.S. Patent No. 6,012,007 requires deactivating
 22 an airbag when the weight on a seat drops below "a level indicative of an empty
 23 seat." The accused MBUSA system, however, deactivates the airbag as soon as the
 24 weight on the seat falls below a level indicative of a seat occupied by a child, which
 25 is at 20 kg and not zero or substantially zero. U.S. Patent No. 5,954,775 requires the
 26 use of a dual rate communication protocol – i.e., a protocol that transmits data at two
 27 different data rates. The accused MBUSA system, however, does not use dual rates;
 28 it transmits data at only one data rate. U.S. Patent No. 5,714,927 requires
 prolonging a blind spot warning signal after the blind spot radar can no longer detect
 a target vehicle. The accused MBUSA system, by contrast, continues to detect
 vehicles long before and long after they are in the blind spot warning zone.

1	Deadline	Original Date	New Date
2	Cutoff		
3	SJ/Daubert Filing Deadline	January 8, 2016	January 29, 2016
4	SJ/Daubert Hearing Deadline	February 8, 2016	February 29, 2016
5	Order on the Sequence of Trials	--	March 15, 2016
6	Pretrial Disclosure Filing	February 22, 2016	April 15, 2016
7	Trial 1 Final Pretrial Conf.	February 29, 2016	April 29, 2016
8	Trial 1	March 15, 2016	May 10, 2016 (Original Trial 2 Date)

15 **Mazda's Statement**

16 Mazda joins MBUSA's statement on the first through third points. As to the
 17 final point, Mazda similarly expects to prevail at the summary judgment stage.
 18 Mazda, however, suggests that the Court set a schedule for determining trial
 19 sequence (*e.g.*, by ordering a joint report following the due date for dispositive and
 20 *Daubert* motions).

21 To the extent the Court decides to set a trial schedule at this stage, Mazda
 22 agrees to the sequence provided by Plaintiff.

23 **Subaru's Statement**

24 Subaru joins MBUSA's and Mazda's statement on MBUSA's first through
 25 third points. As to MBUSA's final point, Subaru similarly expects to prevail at the
 26 summary judgment stage . Further, only one claim of one patent is asserted against
 27 Subaru, and the maximum scope of any possible claim of damages is so limited that
 28

1 proceeding to trial will result in a substantial waste of judicial and party resources
 2 regardless of the outcome. Further, Subaru and Signal IP are engaged in settlement
 3 discussions and, while no agreement has been reached, settlement before trial is
 4 possible.

5 To the extent the Court decides to set a trial schedule at this stage, Subaru
 6 agrees to the sequence provided by Plaintiff.

7 **Kia's Statement**

8 Kia agrees with the other defendants' requested modification to the schedule.
 9 Signal has already agreed to dismiss the claim of infringement of the '927 patent
 10 against Kia, leaving only claim 21 of the '007 patent. Kia has informed Signal that
 11 if it does not withdraw that one remaining claim before summary judgment, Kia will
 12 seek attorney fees under 35 USC 285 because Signal has no good faith basis to
 13 proceed on that claim. In the interest of judicial economy, therefore, Kia joins the
 14 requested modest change to the schedule.

15 **Honda's Statement**

16 Honda agrees with the other defendants' requested modification to the
 17 schedule. In particular, Honda believes that the deadline for dispositive and Daubert
 18 motions should be extended until all expert depositions are completed, as set forth
 19 above. Such an extension is in the interest of justice and judicial economy, and
 20 further will not prejudice Signal. Like the other defendants, Honda also joins the
 21 request in light of the strength of its position in this matter. However, to the extent
 22 that the pending motion to stay is denied and any portion of plaintiff's cases
 23 survives dispositive motions, Honda believes that any party that did not join the
 24 motion to stay should proceed to trial first.

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26 **BMWNA's Statement**

27 BMWNA joins Mazda's statement. To the extent the Court wishes to set the
 28 cases for trial at this stage, BMWNA suggests the Court order each case for trial in

1 the order in which the case was filed. To the extent more than one case was filed on
 2 the same day, BMWNA suggests the Court order trials for those cases by Civil
 3 Action No. Under BMWNA's suggested approach, the cases Signal IP filed in 2014
 4 would proceed to trial in the following order:

<u>Trial No.</u>	<u>Defendant</u>	<u>Date Case Was Filed</u>	<u>C.A. No.</u>
1	Honda	4/1/2014	2:14-cv-2454
2	Kia	4/1/2014	2:14-cv-2457
3	Mazda	4/1/2014	8:14-cv-491
4	Nissan	4/17/2014	2:14-cv-2962
5	Subaru	4/17/2014	2:14-cv-2963
6	MBUSA	4/23/2014	2:14-cv-3109
7	BMWNA	4/23/2014	2:14-cv-3111
8	VWGoA	4/23/2014	2:14-cv-3113

14 Proceeding in the order the cases were filed not only makes logical sense, but also is
 15 an approach followed by other Courts. *See, e.g., Prism Techs. LLC v. Sprint*
Spectrum L.P., C.A. No. 8:12-cv-123-LES-TDT, Doc. 287 (D. Neb. Feb. 9, 2015)
 16 (ordering trials by C.A. No.).

17 **Nissan's Statement**

18 Nissan agrees with the other defendants' requested modification to the
 19 schedule. As with the other defendants, Nissan joins the request based on the
 20 strength of its positions in this matter. To the extent the Court decides to set a trial
 21 schedule at this stage, Nissan agrees to the sequence provided by Plaintiff.
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1 Dated: December 21, 2015

LINER LLP

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SIGNATURE ATTESTATION

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I hereby certify that concurrence in the filing of this document has been
obtained from each of the other signatories shown above.

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